

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0262

**Gross Income Tax
For The Period 1991 Through 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax – Rate of Taxation

Authority: 45 IAC 1-1-107; 45 IAC 1.1-2-8

The taxpayer protests the imposition of gross income tax at the high rate on the sale of previously leased property.

II. Tax Administration – Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-1 & 2

The taxpayer protests the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is an auto leasing company. The taxpayer maintains no business situs in Indiana. The taxpayer's activities consist of leasing automobiles and trucks to Indiana customers. At the expiration of the lease the vehicles are sold to the lessee, a local dealer, or at an auction located outside of Indiana.

Additional facts will be provided as necessary.

I. Gross Income Tax - Rate of Taxation**DISCUSSION**

The taxpayer protests the imposition of gross income tax at the high rate on the sales of previously leased vehicles. According to the taxpayer, they are in the business of leasing motor vehicles. The leases are obtained through authorized dealers. The customer enters into a lease with the dealer who subsequently assigns the lease and sells the automobile to the taxpayer. During the term of the lease the customer deals directly with only the taxpayer. At the end of the lease, the vehicle may be sold to the customer, the dealer, or is generally returned to the taxpayer and subsequently sold at wholesale auction. The taxpayer regularly sells hundreds of millions of dollars worth of formerly leased assets. The taxpayer contends that this is a regular and significant component of its business.

45 IAC 1-1-107 provides in pertinent part:

Taxpayers engaged in leasing tangible personal property hold such property as a capital or depreciable asset during the time it is leased. If such assets are sold upon their return to the lessor, or because of the lessee's exercise of an option to purchase, receipts from the sale are taxable at the higher rate. **However, if such assets are sold in the regular course of the taxpayer's business, the property has the character as inventory and receipts from the sale are taxable at the lower rate**

(Emphasis added).

The taxpayer's leased automobiles are sold in the regular course of its business and therefore subject to the low rate of tax under 45 IAC 1-1-107.

The taxpayer is put on notice that 45 IAC 1-1-107 was repealed effective January 1, 1999 and the transactions in question are now governed by 45 IAC 1.1-2-8.

FINDING

The taxpayer's protest is sustained.

II. Tax Administration – Penalty**DISCUSSION**

The taxpayer protests the Department's imposition of the ten percent (10%) penalty assessment. Indiana Code section 6-8.1-10-2.1 requires a ten percent (10%) penalty to be imposed if the tax deficiency is due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent in nature.

Departmental regulation 45 IAC 15-11-1(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is also to be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . .".

In this instance, the taxpayer has shown reasonable cause. The taxpayer has provided to the Department's satisfaction, sufficient justification for waiving the ten percent (10%) penalty.

FINDING

The taxpayer's protest is sustained.